

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jovan Cornelius Simon, # 25282-171,) CIVIL ACTION NO. 9:13-3025-RMG-BM
))
Plaintiff,))
))
v.))
))
L/CPL Kevin Paige, SCHP; Trooper Bucky))
Geddings, SCHP; L/Cpl Mark Jennings,))
SCHP; and Agent H. Eric Cohoon, ATF;))
))
Defendants.))

)

This action has been filed by the Plaintiff, pro se, pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Construed liberally, Plaintiff alleges that the named Defendants violated his constitutional rights during the course of his arrest on May 9, 2013.

The Defendants Geddings and Jennings have filed a motion to dismiss pursuant to Rule 12(b), Fed.R.Civ.P. However, the question of whether Plaintiff has alleged sufficient facts against these two Defendants to survive summary dismissal has already been address by the Court, with the Court concluding that Plaintiff's allegations against these two Defendants, as amended, are sufficient to survive summary dismissal. See Court Docket Nos. 18, 25, 28. Therefore, it is recommended that these Defendants' motion to dismiss be **denied**. Aloe Creme Laboratories, Inc. v. Francine Co., 425 F.2d 1295, 1296 (5th Cir. 1970). [“The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time. Once was sufficient.”]. If, after discovery, these Defendants believe the facts and evidence do not



support Plaintiff's claims, then they may file a properly supported Rule 56 motion for summary judgment at that time.¹

The parties are also referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

June 10, 2014
Charleston, South Carolina

¹In the event the Court does not adopt this Report and Recommendation, a Roseboro order should be issued prior to entry of any final order dismissing any Defendant. See Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975).

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a Defendants’ Exhibit novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).